

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

CHERYL KYLE,

Plaintiff,

v.

**SAM'S EAST, INC. d/b/a RAYMORE
SAM'S CLUB NO. 8243,**

Defendant.

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Case No. 4:20-cv-00933

DEFENDANT SAM'S EAST, INC.'S NOTICE OF REMOVAL

Defendant Sam's East, Inc. ("Sam's"), with full reservation of all defenses, objections, and exceptions, including but not limited to service, jurisdiction, venue, and statute of limitations hereby removes the above-captioned matter from the Circuit Court of Cass County, Missouri to the United States District Court for the Western District of Missouri, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support thereof, Defendant states the following:

I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED.

1. Plaintiff filed her lawsuit against Defendant in the Circuit Court of Cass County, Missouri, Case No. 20CA-CC00227, on October 9, 2020.

2. Defendant Sam's East, Inc. was served with process on October 22, 2020. Sam's has not answered Plaintiff's Petition.

3. As required by 28 U.S.C. § 1446(a), a copy of all records and proceedings from the Circuit Court of Cass County, Missouri are attached as **Exhibit A**.

4. This Notice of Removal is properly directed to this Court pursuant to 28 U.S.C. § 1446(a) as it is the United States District Court embracing the Circuit Court of Cass County, Missouri, where plaintiff's Petition is currently pending. *See* 28 U.S.C. § 96.

5. Without waiving any objection to service, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because the same has been filed within thirty (30) days of service on defendant.

6. Pursuant to 28 U.S.C. § 1446(d), defendant filed written notice of this removal with the Clerk of the Circuit Court of Cass County, Missouri where plaintiff's Petition is currently pending. A copy of this Notice of Removal and the written notice of the Notice of Filing Notice of Removal have been served upon plaintiff.

II. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS.

8. Upon information and belief, plaintiff is a citizen of Missouri. *See* Plaintiff's Petition, Exhibit A, at ¶ 1.

9. Defendant is a business entity organized and operating under the laws of the State of Delaware, whose headquarters and principal places of business are in Bentonville, Arkansas. Accordingly, this defendant is a citizen of Delaware and Arkansas for the purposes of determining this Court's subject matter jurisdiction. *See* 28 U.S.C. § 1332(c).

III. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.

10. Where a plaintiff has not specified a specific amount of damages in his state court petition, the removing party "must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000." *Miller v. CEVA Logistics*, 2008 U.S. Dist. LEXIS 2116, *2 (W.D. Mo. 2008), *quoting In re Minnesota Mut. Life Ins. Co. Sales Practices Litig.*, 346 F.3d 830, 834 (8th Cir. 2003). Plaintiff may only defeat removal by showing "to a legal certainty that recovery cannot exceed \$75,000." *Miller*, 2008 U.S. Dist. LEXIS, at *3 (emphasis added).

11. To meet its burden of proof, a defendant seeking removal must present specific facts or evidence, which may include “an extensive list of serious and disabling injuries suffered by the plaintiff.” *Id.*

12. Plaintiff’s petition alleges in part that she suffered serious, permanent, and debilitating injuries to and including her right knee, past and future medical expenses including hospitalization, past and future great physical pain, suffering, loss of enjoyment of life and mental anguish. *See* Plaintiff’s Petition, Exhibit A, ¶ 16. These various alleged injuries and unspecified related or anticipated treatment, coupled with the allegation of permanency, are certainly complex and likely to place in dispute medical and other damages in excess of \$75,000.

WHEREFORE, for the foregoing reasons, Defendants Sam’s East, Inc. remove this action from the Circuit Court of Cass County, Missouri to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and for such other relief as the Court deems just and proper.

Respectfully Submitted,

BAKER STERCHI COWDEN & RICE, L.L.C.

/s/ James R. Jarrow

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ATTORNEYS FOR DEFENDANT
SAM’S EAST, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed using the Court's CM/ECF system on this 23rd day of November 2020, and a copy was served via U.S. Mail, postage prepaid addressed to:

Michael W. Wharton
COUCH, PIERCE, KING &
WHARTON, CHARTERED
12 Corporate Woods Suite 370
10975 Benson Drive
Overland Park, Kansas 66210

ATTORNEYS FOR PLAINTIFF

/s/ James R. Jarrow